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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,395

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Włodzimierz Rutynowski

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EXAMINER

HUANG, LIAN

ART UNIT

PAPER NUMBER

3731

MAIL DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,395	<b>Applicant(s)</b> RUTYNOWSKI, WLODZIMIERZ	
	<b>Examiner</b> LIAN HUANG	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

Receipt is acknowledged of applicant's amendment filed 15 September 2008. Claims 1-7 have been canceled without prejudice. Claims 8-19 are pending and an action on the merits is as follows.

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

### *Specification*

The amended specification was received 15 September 2008. It is acceptable as there is no new matter.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8-19 rejected under 35 U.S.C. 103(a) as being unpatentable over **Thorne, Jr. et al. (US 6,359,265 B1)** in view of **Czernicki et al. (US 5,356,420)**.

**Claim 8:** Thorne, Jr. et al. disclose a puncturing device comprising:  
a housing (**300**, see figures 19 and 20), wherein a push button (**340**);

Art Unit: 3731

a puncturing needle (90') disposed in the housing and at least one side jut (354),  
a push button disposed in the housing, wherein the push button has arms (400,  
see figure 22) to guide the push button inside the housing,

one return spring (420, where "spring" is taken to be an elastic device) connected  
to the arms (400) of the push button (340); and

a driving spring (350) having a first and a second end, wherein the first end is  
linked to the push button and the second end drives the puncturing needle in a driving  
direction,

wherein the side jut (354), which is positioned inside the device between the  
return spring and the second end of the driving spring (figures 23 and 17-20), and

wherein the return spring acts against the side jut in a direction opposite the  
driving direction

but fail to teach the puncturing needle having breakable wings and a  
corresponding breaking edge in the housing and the needle having a side jut.

However, Czernecki et al. teach a needle with breakable wings (11) which rest  
against a breaking edge of the housing (12; please compare figures 1 and 2), as well as  
a side jut (11).

It would be obvious to one of ordinary skill in the art at the time of the invention to  
provide the device of Thorne, Jr. et al. with breakable wings as taught by Czernecki,  
since Czernecki states that such a modification would and ensure that the device is not  
reused (column 1, lines 59-62) and maintain the tip in a stable position until the push  
button is activated with a certain force (column 2, lines 29-33 and 35-38).

**Claim 9:** Thorne, Jr. et al. disclose a device as stated above characterized by two return springs (**420**, where “spring” is taken to be an elastic device) each of which is connected to one arm (**400**) of the push button (**340**), and has two side juts (**354**), each of which is positioned inside the device between the two return springs (**420**) and the second end of the driving spring (**350**).

**Claim 10:** Thorne, Jr. et al. disclose a device as stated above wherein the return springs (**420**) are connected approximately perpendicularly to the lower portions of the arms (**400**) of the push button (**340**; figure 22).

**Claim 11:** Thorne, Jr. et al. disclose a device as stated above wherein the first end of the driving spring (**350**) is connected with the inside face of the push button (**340**; figures 17-20).

**Claim 12:** Thorne, Jr. et al. disclose a device as stated above wherein the second end of the driving spring (**350**) comprises a pusher (**352**) that pushes the puncturing needle (**90'**).

**Claim 13:** It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F. 2d 1647 (1987).

**Claim 14:** Thorne, Jr. et al. disclose a device as stated above wherein the pusher has a cup-shaped end (figure 23) and wherein the puncturing needle fits within the cup-shaped end of the pusher (column 8, lines 35-36), but fails to explicitly state that the needle has a projection that fits within the pusher.

However, it is obvious to one of ordinary skill in the art at the time of the invention to provide the needle with a projection to fit into the pusher since such a modification would better ensure that the needle does not slip out.

**Claim 15:** Thorne, Jr. et al. disclose a device as stated above wherein the driving spring (350) is shaped like the letter "S" (figures 17-20).

**Claim 16:** Thorne, Jr. et al. disclose a device as stated above wherein the return springs (420) are flat springs (figure 22).

**Claims 17-18:** Thorne, Jr. et al. modified by Czernecki et al. teach a device wherein a first force applied to the push button (Czernecki et al., 2) compresses the driving spring (9) between the push button and the puncturing needle (Czernecki et al., 7) and presses the breakable wingw (Czernecki et al., 11) against the breaking edge (Czernecki et al., 12) until said wings break (Czernecki et al., figure 2),

wherein, upon breaking the wings, the driving spring (Czernecki et al., 9) drives the puncturing needles such that a lancet of the puncturing needles extends outside the housing and the side jut (Czernecki et al., 5) contacts the return spring (Czernecki et al., 10, figure 2), and

wherein after the lancet extends outside the housing (Czernecki et al., 1), the return spring (Czernecki et al., 10) applies a second force to the side jut (Czernecki et al., 5) in a direction opposite the first force to pull the lancet of the puncturing needle inside the housing (Czernecki et al., column 2, lines 40-41),

wherein after pulling the lancet of said needle inside the housing (Czernecki et al., 1), the return spring (Czernecki et al., 10) and the driving spring (Czernecki et al., 9)

Art Unit: 3731

are in a free state (Czernecki et al., column 2, lines 41-42, where a stable position is a free state).

**Claim 19:** Thorne, Jr. et al. disclose a device as stated above wherein the arms are integral to the push button (figure 19). It has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening. In re Hotte, 177 USPQ 326, 328 (CCPA 1973).

### ***Response to Arguments***

3. Applicant's arguments with respect to claim 8, where the return spring (42) fails to "return" the lancet of the needle to within the housing, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F. 2d 1647 (1987).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIAN HUANG whose telephone number is (571)270-3987. The examiner can normally be reached on 7:30 AM-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. H./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731